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Sent: 11/22/2010 9:15:33 AM
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CC:
Subject: FYI - Inside EPA 11/19/10: Fracking Tort Case To Continue

Fracking Tort Case To Continue

Posted: November 19, 2010

A federal judge has denied almost all efforts by the oil and gas company Cabot to dismiss a tort lawsuit that citizens brought against the company for alleged damage caused by Cabot's drilling operations, including its use of the controversial drilling practice hydraulic fracturing, or fracking.

The order is the latest development in a string of tort cases that some observers say could eventually spur increased federal regulation of fracking. Some observers say that if the threat of civil lawsuits over alleged fracking risks becomes stronger it could build pressure on industry to allow federal regulation by EPA of fracking in order to preempt state tort lawsuits.

Judge John E. Jones III in a Nov. 15 order denied all but one of Cabot's motions to dismiss parts of the fracking tort case *Fiorentino v. Cabot*, in the United States District Court for the Middle District of Pennsylvania.

In the case, 63 citizens in Dimock Township, PA, sued Cabot seeking cleanup of contaminated wells, the creation of a medical trust fund and other damages that the citizens say stem from stray fracking gas that contaminated their water and made them ill.

Cabot asked the court to dismiss several of the claims because the company said the claims were either based on insufficient information or barred by state tort law.

For example, the company argues that the citizens' claims for strict liability should be dismissed because natural-gas related activities do not meet the "abnormally dangerous" or "ultra-hazardous," threshold set by Pennsylvania law.

However, the judge declined to dismiss this count, arguing that Pennsylvania courts have not yet decided whether gas drilling meets this threshold and arguing that there is not enough information for the district court determine on its own whether the drilling meets the threshold.

The judge did dismiss the citizen's claims for gross negligence because it is not recognized as a cause of action under Pennsylvania law. However, the judge allowed the allegations citizens made to support this claim to remain in the case to support of citizens' claims for punitive damages.

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